

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No. 16-20394

VOLKSWAGEN AG,

Defendant.

SENTENCING HEARING
BEFORE HON. SEAN F. COX
United States District Judge
867 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Friday, April 21, 2017)

APPEARANCES: JOHN K. NEAL, ESQUIRE
BENJAMIN SINGER, ESQUIRE
MARK CHUTKOW, ESQUIRE
JENNIFER L. BLACKWELL, ESQUIRE
Appearing on behalf of the Government.

CHRISTOPHER S. NIEWOEHNER, ESQUIRE
JASON M. WEINSTEIN, ESQUIRE
Appearing on behalf of Defendant
Volkswagen AG.

ALSO PRESENT: MANFRED DOESS, ESQUIRE

COURT REPORTER: MARIE METCALF, CVR, CM
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(None called)

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(None offered)

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1 Detroit, Michigan

2 Friday, April 21, 2017

3 At about 9:52 a.m.

4 * * *

5 DEPUTY COURT CLERK: All rise. The United States
6 District Court for the Eastern District of Michigan is in
7 session. The Honorable Sean Cox presiding. Please be
8 seated.

9 The Court calls case number 16-20394, United States
10 of America versus Volkswagen AG. Counsel, please turn the
11 microphones toward you and state your appearances for the
12 record.

13 MR. NEAL: Good morning, Your Honor.

14 John Neal appearing on behalf of the United States.

15 THE COURT: Good morning.

16 MR. SINGER: Ben Singer appearing on behalf of the
17 United States.

18 THE COURT: Good morning.

19 MS. BLACKWELL: May it please the Court, Jennifer
20 Blackwell on behalf of the United States.

21 THE COURT: Good morning.

22 MR. CHUTKOW: Good morning, Your Honor. Mark
23 Chutkow for the United States.

24 THE COURT: Good morning.

25 MR. WEINSTEIN: Good morning, Your Honor.

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1 Jason Weinstein and Chris Niewoehner on behalf of
2 Volkswagen.

3 And with us at counsel table is Manfred Doess,
4 General Counsel at Volkswagen.

5 THE COURT: Good morning, as well.

6 MR. DOESS: Good morning, Your Honor.

7 THE COURT: Now, who will be representing Volkswagen
8 for the purposes of this hearing?

9 MR. WEINSTEIN: Mr. Doess will, Your Honor.

10 THE COURT: Mr. Doess, could you state your full
11 name for the record, please?

12 MR. DOESS: My name is Manfred Doess. I'm the
13 General Counsel of Volkswagen.

14 THE COURT: And sir, it's my understanding that you
15 are fluent in English and do not need the assistance of an
16 interpreter, is that correct?

17 MR. DOESS: That's correct, Your Honor.

18 THE COURT: Thank you very much.

19 Before proceeding, I would like to provide some
20 background information relating to this case, this criminal
21 case against VW and related cases.

22 On January 11 of this year 2017, the government and
23 Volkswagen entered into a plea agreement under Rule 11, and
24 the government filed the third superseding information
25 charging VW with three criminal counts.

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1 Count One, conspiracy to defraud the United States,
2 to commit wire fraud, and to violate the Clean Air Act.
3 Count Two, obstruction of justice. And Count Three, entry of
4 goods by false statement.

5 The government then filed an unopposed motion and
6 memorandum to authorize alternative victim notification
7 procedures pursuant to 18 U.S.C. Section 3771(d)(2). In it,
8 the government has acknowledged that it has various
9 obligations under the Crime Victims Rights Act. It explained
10 that it would be impractical to identify and to provide
11 individual notice of every public proceeding to each
12 potential victim directly or proximately harmed by the
13 charged scheme to defraud in the criminal cases and asked
14 this Court to adopt a reasonable procedure for providing
15 notice to the potential crime victims in these criminal
16 cases, allowing the government to provide notice to the
17 victims through three different websites maintained and
18 regularly updated by the government. This Court granted the
19 motion on February 7, 2017.

20 This Court later directed the government to include
21 information on those websites advising victims that they may
22 submit written victim impact statements to the Court through
23 the assigned probation officer, which had to be received by
24 April 12, 2017.

25 The Court notes that two miscellaneous cases that

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1 are related to the criminal action were filed by the alleged
2 victims of the criminal offenses. Miscellaneous case numbers
3 17-50280 and 17-50336. In those cases, the alleged victims
4 asked the Court to reject the Rule 11 and order restitution
5 for the crime victims.

6 Meanwhile, the government and Volkswagen filed a
7 motion in this case, and similar filings in both
8 miscellaneous cases, asking the Court to find under 18 U.S.C.
9 Section 3663A(c)(3) that individual restitution is not
10 appropriate in the criminal case.

11 On March 10, 2017, this Court held a plea hearing in
12 the criminal case against VW. At that time VW entered a
13 guilty plea as to Counts One, Two, and Three of the third
14 superseding information. And this Court accepted that guilty
15 plea on behalf of the corporation. At the end of the
16 March 10 hearing, this Court took the Rule 11 Agreement under
17 advisement and referred the matter to the probation
18 department for the preparation of a presentence report.

19 That, of course, brings us to today, the date and
20 time set for the sentencing hearing under -- or for VW and
21 determination whether or not this Court is going to accept
22 the Rule 11.

23 First of all, though, I would like to ask Mr. Neal
24 the following question -- or Mr. Chutkow. Have you had the
25 opportunity to review the presentence report prepared by

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1 probation?

2 MR. NEAL: We have, Your Honor.

3 THE COURT: And does the government have any
4 objection, addition, deletion, or correction it would like to
5 make to the presentence report?

6 MR. NEAL: It does not, Your Honor.

7 THE COURT: All right. Mr. Weinstein, have you had
8 the opportunity to review the presentence report with your
9 client?

10 MR. WEINSTEIN: We have, Your Honor.

11 THE COURT: And do you have any objection, addition,
12 correction, or deletion you wish to bring to my attention?

13 MR. WEINSTEIN: We do not, Your Honor.

14 THE COURT: Mr. Doess, have you had the opportunity
15 to review the presentence report with your attorneys?

16 MR. DOESS: I had, Your Honor.

17 THE COURT: And do you have any objection, addition,
18 correction, or deletion that you wish to bring to my
19 attention?

20 MR. DOESS: No, Your Honor.

21 THE COURT: Thank you very much. All right.

22 As you are all aware this is a juncture in the
23 proceeding where I must determine whether to accept or reject
24 the Rule 11 Agreement. Under this particular Rule 11
25 Agreement, the Court's authority is limited to either

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1 acceptance or rejection of the specific sentence set forth in
2 the Rule 11 Agreement. The Court further notes that there is
3 one important aspect in the Rule 11 Agreement that needs to
4 be addressed or noted, certainly. It provides for no
5 restitution for victims in connection with this criminal
6 case. That's at pages 14 and 15 of the Rule 11 Agreement.
7 And that states as follows; (e) Restitution. No order of
8 restitution is appropriate in this case pursuant to 18 U.S.C.
9 Section 3663A(c)(3), as the number of identifiable victims is
10 so large as to make restitution impracticable and/or
11 determining complex issues of fact related to the cause or
12 amount of victim's losses would complicate or prolong the
13 sentencing process to a degree that the need to provide
14 restitution to any victim is outweighed by the burden on the
15 sentencing process.

16 Moreover, again, this is in the Rule 11 as noted in
17 paragraph 2(a) above, the defendant has already -- defendant,
18 of course, is VW -- has already agreed to compensate members
19 of the class in In Re Volkswagen Clean Diesel Marketing,
20 Sales Practices, and Products Liability Litigation, which is
21 currently in the Northern District of California, which
22 consists of individuals who purchased affected vehicles as
23 described in Exhibit 2 of the Rule 11.

24 First question. Mr. Neal or Mr. Weinstein, do
25 either one of you wish this Court to accept the Rule 11

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1 Agreement?

2 MR. NEAL: Yes, Your Honor. The government moves
3 that the Court accept the Rule 11 Agreement.

4 THE COURT: Could you tell me why the government
5 believes this Court should accept the Rule 11?

6 MR. NEAL: Yes, Your Honor. Would you like me to
7 focus specifically on restitution issue or speak to the Rule
8 11 Agreement more broadly?

9 THE COURT: Very broadly the Rule 11 Agreement, and
10 then specifically the restitution issue.

11 MR. NEAL: Very good.

12 Your Honor, at the plea hearing in this case, the
13 government as well as Volkswagen AG put on the record a
14 number of the considerations that are laid out in the Rule 11
15 Agreement that counsel in favor of it's acceptance. I don't
16 want to repeat myself, but I think maybe the best way to
17 frame this issue for the Court is to talk about why the plea
18 agreement is in the public interest and consistent with the
19 sentencing factors the Court is to consider under Section
20 3553(a) of Title 18.

21 Start out talking about the nature and circumstances
22 of the offense. This is a very serious offense. The Court
23 has noted that in the past. The plea agreement and the
24 sentencing provisions in the plea agreement take it
25 seriously. There's a \$2.8 billion criminal fine that's

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1 called for in the plea agreement. It's one of the largest
2 criminal fines in a corporate matter that we have seen
3 certainly in this jurisdiction, even nationally in the past
4 number of years.

5 This case is ending with a guilty plea as opposed to
6 some lesser form of resolution by Volkswagen AG. That's not
7 necessarily a common form of resolution in a corporate case.
8 Many of these resolve via deferred prosecution agreements.

9 The fact that Volkswagen AG is pleading guilty to a
10 series of criminal offenses, and there's a detailed statement
11 of facts supporting that guilty plea, is, you know, a very
12 significant benefit to the public and a significant aspect to
13 this resolution.

14 There is the plea agreement, as Your Honor knows,
15 calls for the appointment of a corporate compliance monitor.
16 It would like to announce that the government has selected a
17 team headed by Larry Thompson to fulfill this function.
18 Larry Thompson is a former Deputy Attorney General at the
19 Department of Justice, a former General Counsel of the Pepsi
20 Corporation. Someone with a distinguished career in both
21 public-service and in the private sector. And Mr. Thompson
22 has assembled a team in which the government has considerable
23 confidence. That team includes individuals with expertise in
24 German law, German corporate structures, environmental law,
25 the automotive industry, automotive compliance, and the

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1 government has a great deal of confidence that Mr. Thompson's
2 team will ensure that Volkswagen AG complies with all of the
3 provisions of the Rule 11 Agreement moving forward and in
4 compliance with federal law moving forward.

5 I think, again, the nature and circumstances of this
6 offense were very, very serious. There was an intentional
7 effort on the part of a major corporation to evade US law and
8 to lie to US regulators.

9 I think these provisions in the Rule 11 Agreement,
10 the fine, the fact that it is a guilty plea, and the fact
11 that there is a corporate monitor who will be appointed all
12 are a reflection of the seriousness of the offense here.

13 Turning to the history and characteristics of the
14 offender, I think the agreement takes this into account as
15 well. It takes it into account appropriately. The statement
16 of facts makes clear that this was not the act of a rogue
17 employee at Volkswagen, but rather, this was a very
18 intentional decision on the part of the corporation to engage
19 in this misconduct. That is a negative factor that I think
20 the Court should take into account in imposing sentence in
21 this case. I believe the Rule 11 Agreement did take this
22 into account.

23 The Rule 11 also took into account certain aspects
24 of Volkswagen AG's behavior that weigh in a more favorable
25 light for the corporation. The company did cooperate in a

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1 way that provided substantial assistance to the United States
2 in conducting our criminal investigation, both of Volkswagen
3 AG and corporate entities and with respect to individuals.

4 The corporation has agreed to pay a \$1.5 billion
5 civil penalty, and also has engaged in the process, which
6 I'll talk a little bit more about in a moment, whereby it
7 compensates individual consumers for the losses that were
8 associated with Volkswagen's misconduct in a very fulsome
9 way. So I think that's under the consideration that the
10 agreement appropriately takes into account when assessing
11 Volkswagen's history and characteristics.

12 With respect consideration of deterrence, brother
13 counsel for Volkswagen AG can address specific deterrence
14 perhaps better than the government can in this case. But I
15 think it's fair to say that this entire process has a very
16 significant impact on Volkswagen AG. It's had a very
17 significant financial impact. It's had a very significant
18 reputational impact.

19 The appointment of a compliance monitor will ensure
20 that Volkswagen AG's culture changes in a positive way and
21 will ensure that Volkswagen is in compliance with all of its
22 obligations in these agreements and in compliance with
23 federal law. So I think the agreements appropriately will
24 deter Volkswagen from engaging in this sort of conduct in the
25 future.

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1 THE COURT: What about the restitution issue?

2 MR. NEAL: Turning to the restitution issue, Judge,
3 I think the position of both parties is that criminal
4 restitution in this matter would unduly delay the sentencing
5 process and would involve a very complex undertaking by this
6 Court to assess individual restitution for individuals who
7 seek it through this process. There is a separate civil
8 proceeding in the United States District Court for the
9 Northern District of California that has provided a
10 resolution for individuals who purchased the affected
11 vehicles.

12 The government's position, and we stated this at the
13 plea hearing, is that that process provides for more
14 financial recompense for individuals than they would be able
15 to receive through a criminal restitution process. And I
16 believe that's why more than 99.5 percent of all affected
17 plaintiffs have agreed to seek restitution through that
18 process or agree to seek compensation through that process
19 rather than seeking compensation through the criminal
20 process.

21 There were a handful of plaintiffs who opted out of
22 the process in California and issued filings and
23 miscellaneous dockets with this Court. It appears that what
24 those individuals are seeking in terms of restitution is the
25 full value of the vehicle at the time they purchased it plus

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1 interest. And, Your Honor, that does not take account for
2 the value associated with their use of the vehicle for how
3 many years they have been driving it, so consequently, that
4 would be a windfall for those individuals, and that it
5 disfavored the case law.

6 If we were to make an appropriate restitution
7 determination for those opt-out individuals, there are really
8 two ways of doing it. One way of doing it is the way it was
9 done in the civil process, which took the value of the
10 vehicles as of September 2015 when the fraud was uncovered
11 and then applied a premium on top of that, which would not be
12 available through restitution. I should note the opt-out
13 plaintiff specifically rejected that method of calculating
14 restitution.

15 So I think the only other method of calculating
16 restitution here would be to try to account on an
17 individualized way for the diminution of value from of -- or
18 the value of the use of the vehicle for every individual
19 plaintiff from the time they purchased it until the present.
20 That would be a complex undertaking. It's really unnecessary
21 and would unduly burden the sentencing process here.

22 So the government does not feel criminal restitution
23 is appropriate in this matter. Thank you, Judge.

24 THE COURT: Mr. Weinstein, could you tell me why I
25 should accept the Rule 11, and in particular, focus on the

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1 issue of restitution.

2 MR. WEINSTEIN: Sure. With the Court's permission,
3 I'll be very brief on why you should accept the -- we believe
4 you should accept the Rule 11, and I'll ask Mr. Niewoehner to
5 address this specific restitution issue.

6 The Court gave us an opportunity at the plea on
7 March 10th to articulate why we believe the plea agreement
8 was appropriate and I won't repeat everything I said then.
9 Here -- and Mr. Neal was very thorough in going through the
10 3553(a) factors. I'll just emphasize a couple of points.

11 As I said on March 10th at the plea, this is
12 unquestionably very serious misconduct, and we believe that
13 this plea agreement provides an appropriately serious
14 sanction for that misconduct. Volkswagen, Your Honor, owned
15 up to what it did wrong. Volkswagen has worked extremely
16 hard and continues to work extremely hard to make it right.
17 Today's proceeding is an important step in that process. The
18 monitorship that Mr. Neal referenced will be another
19 important part of that process.

20 The plea agreement, we believe, appropriately takes
21 into account all of the things that Volkswagen has done to
22 try to make right what it did wrong including its
23 extraordinary cooperation. I recognize "extraordinary" is a
24 word that gets overused a lot and particularly in context
25 such as this. But in my view, it is a term that is

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1 appropriately applied here.

2 The cooperation that Volkswagen provided and
3 continues to provide in the ongoing investigations of
4 individuals is truly extraordinary. Volkswagen's efforts to
5 make things right with the customers -- which Mr. Niewoehner
6 can address in a moment -- through the civil settlements are
7 also truly extraordinary, and certainly unprecedented in my
8 experience. And Volkswagen's efforts to remediate the
9 environment which are ongoing, of course, are also quite
10 significant.

11 In our view, the plea agreement appropriately
12 captures the significance of the misconduct and what
13 Volkswagen did wrong and the significance and aggressiveness
14 of Volkswagen's efforts to make it right. We believe for
15 those reasons the plea agreement is in the government's
16 interest, we believe it's in Volkswagen's interest, and we
17 absolutely believe it's in the public's interest.

18 With the Court's permission, I'll ask Mr. Niewoehner
19 to address restitution.

20 THE COURT: Certainly.

21 MR. NIEWOEHNER: Your Honor, we agree with the
22 government that this is the unusual case where restitution is
23 not appropriate for the victims. And that is because this is
24 an unusual case in the sense that the company has so
25 aggressively moved to try to compensate the people who were

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1 the victims of the crimes to which we've pled guilty.

2 We've laid out for you the details of the settlement
3 offers and agreements. The two-liter deal has over
4 99 percent acceptance of those terms, and the three-liter
5 deal, which the opt-out period closed last Friday, we don't
6 have final figures yet because things can still be coming in
7 the mail, but we expect that we're going to get a similar --

8 THE COURT: Can I interrupt you?

9 MR. NIEWOEHNER: Of course.

10 THE COURT: I apologize. Yesterday I received a
11 letter from Mr. Weinstein. which I assume the government has
12 and I'm assuming that Mr. Hilborn would have as well as the
13 other attorneys representing the victims.

14 MR. NIEWOEHNER: Well, we intend -- what I was
15 actually about to do was to put on the record what was in the
16 letter and then I was also going to detail for you some of
17 the measures we could take to make sure that the folks who
18 have not opted in would be aware of this deal if that would
19 be helpful.

20 THE COURT: Okay. Please.

21 MR. NIEWOEHNER: So we expect that the three-liter
22 deal will have a very similar weight of people opting in and
23 accepting the settlement terms. For the people who did not,
24 even the two-liter or three-liter deals, what we have agreed
25 to do, what we would like to do to ensure that just in case

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1 anybody had any confusion about what this process might mean
2 for them, they will know and they will still have an
3 opportunity to effectively opt-back-in under certain
4 conditions.

5 What Volkswagen has agreed to do for current owners
6 who opted out of the two-liter settlement with the
7 three-liter settlement, we will extend to them the
8 opportunity to participate in the class action settlements.
9 In particular, Volkswagen will offer eligible current owners
10 of two-liter vehicles who opted out of the two-liter
11 settlement from April 28 until May 12 to join the settlement
12 program in exchange for the same release obtained by members
13 of the class. Similarly, if the three-liter settlement is
14 approved, following the final approval hearing on May 11th,
15 Volkswagen will likewise offer a two-week opportunity for
16 eligible current owners who opted out of the class to
17 participate in the settlement program.

18 What we intend to do to ensure the people are aware
19 of this is several steps. One, there is a website, a
20 class-action website that is maintained by Volkswagen. We
21 will make this offer. We will put it there.

22 We also expect that the Court in California has a
23 website and we will put that information there as well.

24 The plaintiff steering committee also maintains a
25 website, and they have agreed that they will put the

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1 information on their website.

2 And finally, we will all electronically notify -- we
3 have e-mail addresses of the folks who have opted out and we
4 will intend to send e-mails to those people individually, as
5 well as Mr. Hilborn, to make sure that they are all aware --
6 and Mr. Yarin -- to make sure they are all aware of the terms
7 of what I just laid out.

8 THE COURT: Okay, very good. Thank you.

9 MR. NIEWOEHNER: Thank you.

10 THE COURT: Under the Crime Victims Rights Act, a
11 crime victim is a person directly and proximately harmed as a
12 result of the offense. That's 18 U.S.C. Section 377E.

13 At this time the Court will allow any alleged
14 victims or representatives of alleged victims the opportunity
15 to address the Court as to their respective positions as to
16 whether or not this Court should accept or reject the Rule 11
17 agreement.

18 I will start with the victims in case number
19 17-50336, who are represented by Mr. Hilborn and
20 Mr. Melkersen.

21 Is Mr. Hilborn or Mr. Melkersen present in the
22 Court? Okay, I don't hear or see anybody.

23 All right. I do have their statements, as well as
24 certain victim statements as well.

25 The next is case number 17-50280, Mr. Yarin.

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1 Is Mr. Yarin present in the courtroom? All right.
2 So we don't have -- no one has appeared in case number
3 17-50336, nor 17-50280.

4 Are there any other victims in any cases that wish
5 to address the Court?

6 None. Okay.

7 For the record, I have received a total of three
8 victim impact statements. The first victim impact statement
9 is from an attorney by the name of Stephen Webster who
10 indicates that he represents six alleged victims who have
11 filed civil actions against Volkswagen.

12 That statement includes calculations as to how much
13 restitution each of these victims believe they are entitled
14 to, along with documentation regarding the purchase of
15 Volkswagen vehicles.

16 The second victim impact statement which is 19 pages
17 long, is from Mr. Yarin, the individual who initiated case
18 number 17-50280.

19 Among other things, Mr. Yarin contends that
20 restitution should be provided to victims in connection with
21 the criminal case. Mr. Yarin also asserts that the Court
22 should impose a greater fine against VW than set forth in the
23 Rule 11 Agreement.

24 The third victim is an individual -- I'm sorry. The
25 third victim impact statement is from Richard Lloyd, who has

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1 provided us with a rather interesting statement. His
2 statement indicates that he is nearly 80 years old, and that
3 he has been having computer-related trouble navigating the
4 system in place relating to this civil settlement program.
5 He sounds a lot like me when I am on a computer.

6 Mr. Lloyd does not ask the Court to order
7 restitution in the criminal case. Rather, he indicates he
8 wishes to accept the civil settlement, and that any help
9 would be greatly appreciated. And so perhaps VW will give
10 him a little help down the road.

11 MR. NIEWOEHNER: Your Honor, for Mr. Lloyd, I
12 believe we have reached out and sent him a letter, and we
13 will try to facilitate his use of the system.

14 THE COURT: Thank you. So this court has carefully
15 considered all three victim impact statements that were
16 submitted, and I appreciate the time and effort that went
17 into the preparation and submission of these statements.

18 Now, I have carefully reviewed the statements. I
19 have reviewed the applicable case law, and I've considered,
20 carefully considered the issue.

21 So after careful deliberation, and this Court having
22 considered the arguments, the written motions, and
23 submissions, this Court finds pursuant to 18 U.S.C. Section
24 366A (sic), that from the facts in this record, that
25 determining complex issues of fact relating to the cause or

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1 amount of victims' losses would complicate or prolong the
2 sentencing process to a degree that the need to provide
3 restitution to any victim is outweighed by the burden on the
4 sentencing process.

5 Therefore, this Court overrules the victim
6 objections to the Rule 11 Agreement made in connection with
7 miscellaneous cases 17-50336, and 17-50280 made through the
8 victim impact statements.

9 The Court denies all motions and requests for
10 restitution in miscellaneous cases 17-50336, and 17-50280,
11 through the victim impact statements.

12 And this Court grants the joint motion for order
13 under 18 U.S.C. Section 3663A, in criminal case number
14 16-20397, and related motions, requests made in miscellaneous
15 case numbers 17-50280, and 17-50336.

16 So the bottom line is no restitution shall be
17 provided to victims in connection with this criminal case.

18 Mr. Weinstein, before I impose sentence, is there
19 anything you wish to say on behalf of your client?

20 MR. WEINSTEIN: Nothing on behalf of my client,
21 although at the appropriate time Mr. Doess does have a
22 statement he would like to make to the Court.

23 THE COURT: How about if he waits until after the
24 government makes its statement?

25 MR. WEINSTEIN: Sure.

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1 THE COURT: He might have some comments, okay?

2 MR. WEINSTEIN: Okay.

3 THE COURT: Mr. Neal, is there anything you wish to
4 say on behalf of the government before I impose sentence?

5 MR. NEAL: Nothing further from the government, Your
6 Honor.

7 THE COURT: Mr. Doess, you have the right to speak
8 on behalf of VW.

9 Is there anything you wish to say to me before I
10 impose sentence?

11 MR. DOESS: Yes, Your Honor. Thank you for the
12 opportunity to address the Court.

13 On behalf of Volkswagen, I stand before you today
14 with remorse, determination, and confidence.

15 I stand here with remorse over the misconduct of
16 this company over a nearly ten-year period. Volkswagen
17 deeply regrets the behavior that gave rise to this case.
18 This misconduct was not consistent with the values of this
19 company, and plain and simple, it was wrong.

20 We let people down, and for that we are deeply
21 sorry. I stand here to express the company's determination
22 that it will continue to take the necessary steps to ensure
23 that nothing like this ever happens again.

24 We have worked tirelessly over the past 18 months to
25 find out what happened, and to make things right. That has

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1 included moving aggressively to resolve claims by our U.S.
2 customers and regulators in the U.S., including up to
3 13 billion in civil settlements, nearly three billion in
4 environmental remediation, and two billion in investment in
5 infrastructure for zero emissions vehicles.

6 It has included cooperating extensively with the
7 Department of Justice in its investigation over -- of
8 responsible individuals. It has included reaching this plea
9 agreement and the related consent decree to resolve matters
10 with DOJ and the EPA, including pleading guilty and agreeing
11 to pay a total of 4.3 billion U.S. dollars in criminal and
12 civil penalties.

13 And it has included implementing reforms within the
14 company, including changes in personnel, structure,
15 processes, and culture, with the goal of strengthening
16 accountability, enhancing transparency, and helping prevent
17 something like this from happening again.

18 We have made significant strides, but there is much
19 more to do. We look forward to working with the monitor, as
20 we continue to build on reforms we've made so far.

21 And finally, I stand here with confidence in the
22 future of the company because there is a company-wide
23 commitment from the highest levels of leadership to continue
24 these reforms. Volkswagen today is not the same company it
25 was 18 months ago. The change process underway is the

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1 biggest in our history.

2 Volkswagen will continue to press forward with these
3 and many other important changes to the way we operate so we
4 can earn back the trust of our stakeholders and build a
5 better company. We are working to use what happened here as
6 an impetus to transform the company and make Volkswagen an
7 example of how a socially responsible company should act and
8 lead in the years ahead.

9 I want to take this opportunity to apologize on
10 behalf of the company to the U.S. government, and the other
11 authorities in the U.S., and most of all to our customers
12 here in the U.S. The trust of our customers, our
13 shareholders, partners, employees, and the general public is
14 our most important asset. And we will never stop working to
15 regain their trust. Thank you.

16 THE COURT: That you very much, sir.

17 At a plea hearing on March 10, 2017, VW pled guilty
18 to Counts One, Two, and Three, pursuant to a Rule 11
19 Agreement. In that Rule 11 Agreement, the parties stipulated
20 to what they believed was an appropriate sentence in this
21 case, a fine of \$2.8 billion, and a special assessment of
22 \$1200, as well as a period of three years probation.

23 However, I have an independent obligation to ensure
24 that the stipulated sentence as set forth in the Rule 11
25 Agreement is sufficient but not greater than necessary to

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1 comply with the purposes set forth in 18 U.S.C. Section
2 3553(a).

3 The first factor, the nature and circumstances of
4 the offense, the history and characteristics of the
5 defendant. As I said before, and if I recall correctly, as I
6 said on March 10, 2017, this is a very serious and troubling
7 case involving an iconic automobile company. And I truly
8 mean the word "iconic."

9 Mr. Doess and I, I think are about the same age.
10 And I just remember VW's reputation at least in our community
11 growing up, and the quality of the product, and the structure
12 of how the car company operated. And it was a leader in its
13 field. And I just can't believe that VW is in this situation
14 that it finds itself in today. Again, this is a very serious
15 and troubling case involving an iconic automobile company.

16 This is a case of deliberate, massive fraud
17 perpetrated by VW management. We don't know how far up the
18 corporate ladder it goes. Hopefully, the DOJ and probably
19 more importantly, hopefully, the German government will do
20 its duty and find out and prosecute those who are responsible
21 for this massive fraud, this deliberate, massive fraud that
22 has damaged, again, an iconic automobile company.

23 This is deliberate and massive fraud perpetrated
24 upon the American consumer, and it would seem consumers
25 throughout the world. This is also a case, and this is very,

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1 very, very troubling to anyone in the legal field. This is a
2 case of deliberate destruction of evidence by VW management,
3 with the participation, and under the supervision of legal
4 counsel. Again, this is a case of a deliberate destruction
5 of evidence by VW management with the participation and under
6 the supervision of legal counsel.

7 This case also involves the failure of the VW
8 supervisory board, which is government, labor, and
9 shareholders. The failure to monitor and -- excuse me. The
10 failure to monitor and competently select the management of
11 VW.

12 Now, who has been hurt by this corporate greed?
13 From what I can see, it's not the managers at VW, the ones
14 who get paid high salaries and large bonuses. As always,
15 it's little guy. And the VW labor, the VW guy working on the
16 line, just like the guy working on the line at Ford, GM, or
17 Chrysler, they get their hourly wage, but so much of what
18 they can do extra depends on their bonus. And so again, in
19 my mind, it is the little guy who's been hurt.

20 First it's the consumer. That consumer who's not
21 looking to buy a high-end car. It's that consumer who wants
22 to buy an economical car from VW for the most part. That
23 consumer, not only in the United States, but throughout the
24 world. And again, the person who has really been hurt in my
25 mind is the man or woman at VW who labors to make the car.

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1 Upper management is not going to take a big hit by
2 the billions of dollars that this fraud has cost VW. But the
3 labor at VW is going to lose millions of dollars, millions of
4 euros in bonus money.

5 And I did see Mr. Muller's remarks on paying the
6 bonuses. The bonuses have shrunk and will shrink because of
7 the billions of dollars that VW has to pay out because of the
8 fraud. And again, as always when it seems to involve
9 corporate greed, it's the little guy that's hurt, hurt the
10 most.

11 Now, I think that the mandates of the Rule 11 will
12 help consumers as well as the working men and women at VW,
13 but again this corporate greed, this failure of management,
14 failure of the supervisory board, has cost VW billions of
15 dollars. And again, I sound like a broken record, but I feel
16 so bad, the individuals who will be hurt the most are the
17 working men and women at VW.

18 So considering the nature and circumstances of the
19 offense, this is a very, very serious offense, and this
20 corporate greed has, is, and will continue to hurt people.

21 I've also considered the need for the sentence
22 imposed to reflect the seriousness of the offense, to promote
23 respect for the law, and provide just punishment for the
24 offense.

25 For the corporate defendant, considering the amount

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1 of money they're paying out, the billions of dollars they are
2 paying out, I do believe it does provide just punishment as
3 to the corporation.

4 I've considered the need to afford adequate
5 deterrence to criminal conduct. Corporate greed is nothing
6 new. It continues. Hopefully, that this sentence will
7 somehow cause others who are thinking about or engaging in
8 fraud, such as the fraud that we saw in this case, not only
9 in the United States, but throughout the world, to think
10 twice and cause corporations to not look the other way when
11 employees are coming up with a scheme that may make them
12 extra money, may allow them to bypass certain emission
13 standards or other standards that are required of the
14 corporation, because the cost in the long run as we can see
15 with VW, is just so, so enormous and so, so destructive to
16 the people of the corporation.

17 I've considered the need to protect the public from
18 further crimes by the defendant. Yes, VW has a lot to do to
19 adjust its corporate culture from what I've learned, which it
20 is doing, and from everything I've seen, that it will
21 aggressively do in the future. And I don't think VW, at
22 least, will be in this type of situation again.

23 And hopefully, the other corporations involved in
24 the manufacture and supply of automobiles will have learned
25 from this as well, and think twice.

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1 Factor D doesn't really apply.

2 I've considered the kinds of sentences available and
3 the sentencing range.

4 I have considered all the factors under 18 U.S.C.
5 Section 3553(a) in imposing the sentence that I'm going to
6 impose right now.

7 Again, VW pled guilty to Counts One, Two, and Three
8 with a Rule 11 on March 10, 2017.

9 Pursuant to the Sentencing Reform Act of 1984, the
10 Court, considering the sentencing guidelines and the factors
11 contained in 18 U.S.C. Section 3553(a), which I've just
12 stated here on the record, hereby orders VW AG to be placed
13 on probation for a term of three years.

14 Further, VW AG shall pay a fine to the Clerk of the
15 Court, to the United States in the amount of \$2.8 billion,
16 which shall be paid within ten days of the entry of the
17 judgment, which will probably be entered today or Monday.

18 Restitution is waived. No order of restitution is
19 appropriate in this case as the number of identifiable
20 victims is so large as to make restitution impracticable
21 and/or determining complex issues of fact relating to the
22 cause or amount of victims' losses to a degree that the need
23 to provide restitution to any victim is outweighed by the
24 burden on the sentencing process.

25 Moreover, the defendant corporation has agreed to

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1 compensate members of the class in In Re Volkswagen Clean
2 Diesel Marketing Sales Practices and Products Liability
3 Litigation, which is currently in the Northern District of
4 California, which consists of individuals who purchased
5 affected vehicles.

6 And of course, I did accept the Rule 11, if I
7 neglected to say that. I am accepting the Rule 11.

8 VW shall pay a special assessment in the amount of
9 \$1200, to be paid immediately.

10 The United States Probation Department shall have
11 available to it any reports prepared by the independent
12 compliance monitor in order to monitor the defendant's
13 corporate compliance, the terms and conditions of probation.

14 Reports prepared by the independent monitor shall be
15 maintained by the United States Attorney's Office for review
16 by the probation department.

17 The VW organization shall abide by the standard
18 conditions of supervision for organizational defendant as
19 adopted by the United States District Court for the Eastern
20 District of Michigan.

21 And that will be the sentence of this court.

22 All right. Mr. Neal, has the Court covered all the
23 sentencing issues?

24 MR. NEAL: It has, Your Honor, with the exception of
25 the appellate waiver, which I understand the --

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1 THE COURT: I was going to get to that. Okay.

2 MR. NEAL: Very well.

3 THE COURT: Mr. Weinstein, has the Court covered all
4 the appellate -- I'm sorry. Has the Court covered all the
5 sentencing issues?

6 MR. WEINSTEIN: You have, Your Honor.

7 THE COURT: Okay. Is there any objection to the
8 sentence by the government?

9 MR. NEAL: No objection, Your Honor.

10 THE COURT: Mr. Weinstein, is there any objection to
11 the sentence by your client?

12 MR. WEINSTEIN: No, Your Honor.

13 THE COURT: Okay. Now, Mr Doess, you may be
14 entitled to appellate review of this conviction and sentence.
15 If you wish to appeal this conviction and sentence, you must
16 do so within 14 days.

17 Do you hear what I just said?

18 MR. DOESS: I understood this, Your Honor.

19 THE COURT: And if you wish to appeal this
20 conviction and sentence, I would suggest you discuss this
21 issue immediately with your attorney.

22 Do you hear what I just said?

23 MR. DOESS: Yes. I heard and understood it.

24 THE COURT: Okay. Mr. Neal, anything else?

25 MR. NEAL: Nothing else, Your Honor.

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1 THE COURT: Mr. Weinstein, anything else?

2 MR. WEINSTEIN: No, Your Honor. Thank you.

3 THE COURT: All right. Thank you.

4 DEPUTY COURT CLERK: All rise. Court is in recess.

5 (Court in recess at 10:39 a.m.)

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C E R T I F I C A T I O N

I, Marie J. Metcalf, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

<u>s\Marie J. Metcalf</u>	<u>April 21, 2017</u>
Marie J. Metcalf, CVR, CM	(Date)